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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,913	02/23/2001	Sunil Keshavji Vadgama	FUJL 18.096	3623
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Katten, Muchin, Zavis & Rosenman 575 Madison Avenue New York, NY 10022-8800				
			EXAMINER PHILPOTT, JUSTIN M	
			ART UNIT 2616	PAPER NUMBER

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action Before the Filing of an Appeal Brief	Application No. 09/763,913	Applicant(s) VADGAMA, SUNIL KESHAVJI	
	Examiner Justin M. Philpott	Art Unit 2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: 7,8,13-19,23,24,26,27 and 29-31.
- Claim(s) rejected: 1-6,9-12,20-22,25,28 and 32-37.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 3. NOTE: The claims marked "currently amended" have already been identically amended on April 20, 2006; thus, contrary to the response being labeled "Amendment", there is no amendment to enter.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's "Remarks" filed June 19, 2006 (pages 14-17) are exactly the same pages previously submitted on April 20, 2006. The arguments in these "Remarks" were fully responded to by the Examiner in the Final Office action mailed May 1, 2006. Accordingly, the following is Examiner's response to these arguments.

Specifically, applicant argues (at pages 14-16) that Ariyoshi cannot anticipate applicant's claims because functional aspects of the invention of Ariyoshi may differ from that of applicant's invention. In particular, applicant argues that information "relat[ing] to phase control of spreading codes" (page 15, line 11) and/or "spreading code synchronization timing information" (page 15, line 8) discussed by Ariyoshi does not anticipate applicant's claim language of "code information identifying a further spreading code". However, this argument is not persuasive for the following reason.

Applicant admits that the information in Ariyoshi (e.g., PJ-i, PC-i, SC-i, and CT) comprises "information" which relates to "spreading codes" (at page 15, lines 4-13). Accordingly, Examiner understands applicant's argument to be the following: 1) the information relates to, but does not have a function of identifying, the spreading codes, and/or 2) the information does not refer to a further spreading code. With respect to the first issue, it remains the Examiner's position that information characteristics of a spreading code which include the phases (Ariyoshi at col. 6, line 62), phase differences (Ariyoshi at col. 9, line 1) and particularly spreading code synchronization timing information (Ariyoshi at col. 8, lines 24-25) are in fact identifying information of a spreading code. In particular, "spreading code synchronization timing information" inherently corresponds to a "spreading code" and inherently must identify the corresponding "spreading code" for that information to be useful. Accordingly, the above-mentioned information in Ariyoshi is identifying information as broadly recited in applicant's claims. With respect to the second issue, the above-mentioned information in Ariyoshi corresponds to a further spreading code of an interfering signal because Ariyoshi specifically discloses that such information is determined as a result of, and to prevent, interference from other terminal stations (e.g., see Ariyoshi at col. 7, lines 51-60; see also col. 3, lines 7-18 regarding "to synchronize the phases of orthogonal codes of respective terminal stations" by measuring "the phase of a reception signal of each terminal station"). Accordingly, applicant's argument is not persuasive.

Additionally, applicant argues more specifically (at page 16) that Ariyoshi is a timing-based solution for increasing network capacity, whereas applicant's invention also solves the same problem but applicant's invention is "based on giving each mobile station knowledge of the spreading codes of significant interfering users (for example high bit rate users HBIUs) so that the mobile station can take steps to cancel out the interference caused by such users" (page 16, lines 12-14). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an invention "based on giving each mobile station knowledge of the spreading codes of significant interfering users [,] for example high bit rate users HBIUs[,] so that the mobile station can take steps to cancel out the interference caused by such users") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). That is, while applicant's invention may arguably differ from the teachings of Ariyoshi, applicant's claims currently do not reflect a distinguishing difference between applicant's invention and Ariyoshi. If applicant's invention does in fact differ from Ariyoshi in the way described above by applicant, applicant is invited to amend the claims accordingly to reflect a difference between the teachings of Ariyoshi and applicant's invention.

Finally, if applicant considers amending the claims to distinguish applicant's invention over Ariyoshi, or alternatively, if applicant is not persuaded that Ariyoshi anticipates applicant's broadly recited claim limitations, applicant should also be mindful of the previously cited art of Bruckert (USP 5,894,500). Specifically, Bruckert teaches a device that receives from a base station "information regarding remote units" that includes "the carrier phase, PN spreading code, and data for remote units that are potential interferers" (Bruckert at col. 4, lines 27-31) and the device includes a noise cancellation unit to reduce the interference effect (e.g., see Bruckert at col. 3, line 50 – col. 6, line 61). Thus, while not relied upon in rejecting applicant's claims, in addition to Ariyoshi, Bruckert also teaches the above-argued aspect of applicant's claimed invention.


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SUPERVISORY PATENT EXAMINER 6/28/06